IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1974 of 2002
with
CRIMINAL MISC.APPLICATION No 2593 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHA GULABHSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1974 of 2002
MR ND NANAVATI FOR MR BM MANGUKIYA for Petitioner No. 1
MS BELA A PRAJAPATI for Petitioner No. 1
MR KAMAL B TRIVEDI, ADDL ADV. GENERAL with
MR PR ABICHANDANI, APP for Respondent No. 1
RULE SERVED for Respondent No. 2

2. Criminal Misc.Application No. 2593 of 2002
MR TUSHAR MEHTA for applicant No. 1
MR ND NANAVATI FOR MR BM MANGUKIYA for opponent No.1
MR KAMAL B TRIVEDI,ADDL.ADV.GENERAL with
MR PR ABICHANDANI, APP for opponent No.2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/04/2003

C.A.V. COMMON JUDGEMENT

This petition under Sec.482 of the Code of Criminal Procedure has been filed for quashing the Criminal Case No.142 of 2000 qua the present petitioner-original accused No.4 pending in the Court of Judicial Magistrate (First Class), Muli.

2. A complaint was lodged with the Muli Police Station by Mr.Chavda, the Revenue Circle Officer working in the office of Mamlatdar, Muli, upon the direction given by the District Collector, Surendranagar to the Mamlatdar, Muli, stating that persons whose names were shown in the complaint were drawing water from Nayaka Dam for irrigating their agricultural land in contravention of notification dated 16th October, 1959 issued by the Collector under Sec.33 of the Bombay Police Act, 1959 prohibiting use of water stored in the dams situated in Surendranagar district including Nayaka Dam and that they have committed offence under Sec.188 of the Indian Penal Code. Said complaint was registered as C.R.No.II-74 of 2000 at Muli Police Station.

2.1 Originally, offence was lodged against three persons namely Ajitsinh Shivlal, Narendrasinh Parmar (son of the present petitioner) and Babu alias Parmar who were shown as accused Nos.1, 2 and 3 respectively.

2.2 According to petitioner, in pursuance of letter dated 17-12-2000 sent by Circle Inspector to Police Sub Inspector stating that since petitioner is also the joint owner of land bearing Survey No.451 of Village Muli, he was named as accused No.4 in the said complaint. It was stated by the aforesaid three watchmen namely Thakubhai B. Parmar, Hakhabhai S. Koli and Kalubhai V. Koli in their statement recorded by Mamlatdar that water was being drawn from wells belonging to Ajitsinh Jadeja, Kanubha G. Parmar (the petitioner herein) and Bababhai through a small canal known as Dhoriya. It was stated by the petitioner that Rojkam recorded by the Mamlatdar and Circle Inspector on 19-12-2000 stated that family members of the petitioner were drawing water from Nayaka Dam. During the course of investigation, statement of complainant was recorded by the investigating officer wherein it was stated that Ajitsinh, Narendrasinh and Bababhai were drawing water from Nayaka Dam by a canal known as Dhoriya to their field. Thereafter, statements of watchmen were also recorded. Since verification of

revenue records namely, Form Nos.8/A and 7/12 shows the petitioner being in possession of the land, he was also added as co-accused in the said complaint. Preliminary panchnama was drawn in presence of Ghanshyambhai Rabari and Gambhirsinh Parmar and thereafter, another panchnama was also drawn in presence of Vadhubhai S. Datta and Salim Dodia. Thereafter, statement of Bababhai, Talati of Village Muli was also recorded wherein it was stated that revenue entry was posted on 18-10-2000 on an application given by the brother of the petitioner stating that after partition between petitioner and his brother, Jorubha Gulabsinh Parmar, land of Revenue Account No.426 went to the share of brother of petitioner and hence, petitioner's name was deleted from revenue record and it was certified by Circle Officer on 15-12-2000. Statements of Motibhai Ranchhodbhai and Gagjibhai were also recorded by the investigating officer wherein it was stated that they were called by one Kanubha for attending the work in their agricultural land bearing Survey No.451 of Village Muli. At the end of investigation, charge sheet was submitted by the I.O. in the Court of Judicial Magistrate (First Class), Muli.

2.3 The petitioner preferred an application being Misc.Cri.Appln.No.7800 of 2000 before this Court wherein while issuing notice, ad-interim order was passed. When the matter came up for final hearing, petition was withdrawn by his learned counsel.

2.4 Thereafter, another application being Cri.Misc.Appln.No.2425 of 2001 challenging the First Information Report was preferred before this Court. This Court (Coram: B.J.Shethna,J.) vide order dated 25-6-2001 rejected the petition with a liberty to prefer application for discharge before the learned Judicial Magistrate (First Class), Muli.

2.5 The petitioner approached the learned Judicial Magistrate (First Class), Muli for discharge. However, said petition was dismissed vide order dated 31-8-2001 by the learned Magistrate.

2.6 Thereafter, Cri.Revision Application No.33 of 2001 was preferred by the petitioner before the Sessions Court at Surendranagar. However, this revision was also dismissed by the learned Sessions Judge, Surendranagar vide judgment and order dated 1-4-2002. Therefore, the present petition has been preferred.

3. Heard learned Senior Counsel, Mr.N.D.Nanavati for Mr.B.M.Mangukia, for the petitioner and learned Addl.

Advocate General, Mr.Kamal B.Trivedi with learned APP, Mr.P.R.Abichandani, for the respondent No.1.

4. It has been argued by Mr.N.D.Nanavati that if the evidence collected by the prosecution in form of co-ownership in the land in question is read as it is, then also, no ingredients of offence alleged against the petitioner are found to have been disclosed in the complaint. According to him, the family arrangement between the present petitioner and his brother had taken place on 16th October, 2000 which is admittedly prior to the date of alleged incident. It has been further argued that since the petitioner was neither the owner nor the occupier of the land in question, no offence can be made out against the petitioner and hence, filing of complaint and charge-sheet leading to the criminal case is nothing but an act of political vendetta as the petitioner is functioning as the President of Surendranagar District Panchayat and belongs to a party not in power in the State and therefore, complaint qua petitioner is required to be quashed and set aside. It has been further argued that complaint has been lodged pursuant to a visit by Mamlatdar to Nayaka Dam on 14-12-2000 and upon recording of three witnesses, it was revealed that water from Nayaka Dam was drawn for the purpose of irrigating agricultural land in contravention of notification issued by the Collector under Sec.33 of the Bombay Police Act, 1959 prohibiting use of water stored in the dams situated in Surendranagar district including Nayaka Dam and, therefore, persons alleged to have drawn water from Nayaka Dam have committed breach of notification issued by the Collector and District Magistrate, Surendranagar and thereby committed offence under Sec.188 of Indian Penal Code. Drawing my attention towards the statements of Hakabhai Sundarbhai koli, Kalubhai Vashrambhai Koli, Thakubhai Bhikubhai Parmar, Motibhai Ranchhodbhai Koli, Gagjibhai, Babubhai Joitaram Prajapati and Mamlatdar, S.P.Chavda and also panchnama as well as the annexures produced along with this petition, it has been argued that petitioner has nothing to do with the crime in question as he was not an owner or an occupier of the land on the date of incident and, therefore it is a fit case wherein power under Sec.482 of the Code of Criminal Procedure is required to be exercised in favour of the petitioner.

5. Learned Addl. Advocate General, Mr.Kamal B. Trivedi, for the State has mainly argued that since there are ample evidence on record connecting the petitioner with the crime in question, it cannot be said that no charge can be framed against the petitioner. Drawing my

attention towards the statements of aforesaid witnesses relied upon by the learned counsel for petitioner and the panchnama in question, he has argued that they are the witnesses of incident. It has been further argued that this petition filed the under Sec.482 of the Code of Criminal Procedure is not maintainable as previously also, present petitioner has filed petition being Cri.Misc.Appln.No.7800 of 2000 before this Court on 22-12-2000 on similar set of circumstances and same has been disposed of as withdrawn on 20-3-2001 with a liberty to file afresh. Thereafter again, Cri.Misc.App,n.No.2425 of 2001 was preferred by the present petitioner, however, same was also disposed of as withdrawn by this Court vide order dated 25-6-2001 with a liberty to approach the learned Magistrate for discharge after filing of charge-sheet by the police before the court below. Thereafter, application at Ex.8 preferred by the present petitioner before the Court of learned J.M.F.C., Muli for discharge was also dismissed vide order dated 31-8-2001. Against said order, Criminal Revision Appln.No.33 of 2001 preferred by the petitioner in the Sessions Court at Surendranagar was also dismissed by the learned Addl. Sessions Judge, Surendranagar vide order dated 1-4-2002 and, therefore, this is a second revision after dismissal of the first one by the Sessions Court and, therefore, it was prayed that inherent powers of the High Court cannot be utilized as substitute in second revision under sub-section (3) of section 397 of Cr.P.C. It has been further argued that power under Sec.482 of Cr.P.C. could be exercised either to prevent abuse of process of any court or otherwise to secure ends of justice. Here in this case, it is argued by him that when there is ample prima facie evidence on record to connect the petitioner with the crime in question especially when it is observed by the court below that there is prima facie evidence on record to frame charge against the petitioner, court should not interfere with the matter at this stage. It is submitted that investigation is over and charge-sheet is submitted and, therefore, the other arguments advanced and the defence putforward on behalf of the petitioner may not be taken into consideration at this stage.

6. My attention was drawn towards the case of State of Kerala and Others Vs. O.C.Kuttan and Others with Seena and another Vs. State of Kerala and Others, AIR 1999 Supreme Court 1044. It has been held by the Apex Court in para 6 as under:

> "At the outset there cannot be any dispute with the proposition that when allegations in the F.I.R. do not disclose prima

facie commission of a cognizable offence, then the High Court would be justified in interfering with the investigation and quashing the same as has been held by this Court in Sanchaita Investment's case, (1982) 1 SCC 561: (AIR 1982 SC 949). In the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: (1992 AIR SCW 237), this Court considered the question as to when the High Court can quash a criminal proceeding in exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India and had indicated some instances by way of illustrations, though on facts it was held that the High Court was not justified in quashing the first information report. This court held that such powers could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. But as an illustration several circumstances were enumerated. Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases, that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the Court and at that stage it is not possible for the Court to shift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of State of U.P. v. O.P. Sharma (1996) 7 SCC 705: (1996 AIR SCW 1229), a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution

exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be and allow the law to take its own course. The same view was reiterated by yet another three-Judges Bench of this Court in the case of Rashmi Kumar v. Mahesh Kumar Bhada, (1997)2 SCC 397, where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. The court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole."

7. My attention was also drawn towards the case of State of Karnataka Vs. M. Devendrappa and another, 2002 AIR SCW 286. It has been held by the Apex Court at ahead note as under:

"Criminal P.C. (2 of 1974), S.472--Quashing of proceedings--Inherent powers--Charge-sheet alleging commission of offences of cheating and forgery--On background of fact, High Court noted that involvement of persons show that they can only be indicated to be witnesses; there was no 'definite evidence' to show that some of the accused were directly involved; and that there was no material to hold that the accused persons had committed theft or forgery for the purpose of cheating or have used genuine forged documents or had cheated the Government; that there was no evidence to infer common intention to commit such offences--Charge-sheet quashed on grounds that continuance of proceedings would be an abuse of process of Court/ends of justice--Not proper--Under S.482 meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal--is not necessary."

8. Keeping in mind the parameters laid down in the aforesaid judgments and on a thorough scrutiny of the statements of Hakabhai Sundarbhai koli, Kalubhai Vashrambhai Koli, Thakubhai Bhikubhai Parmar, Motibhai Ranchhodbhai Koli, Gagjibhai, Babubhai Joitaram Prajapati and Mamlatdar, Mr.S.P.Chavda and keeping in mind the panchnama and the notification issued by the Collector and District Magistrate, Surendranagar, and materials produced on record, it cannot be said that the

allegations made in the complaint do not make out any prima-facie offence against the petitioner. It is to be noted that the request made by the petitioner for discharge was rejected by a reasoned judgment and order by the learned J.M.F.C. on merits considering various judgments in para 4 of his judgment. The learned Magistrate has discussed the matter on facts also and has held that cuminseed crop standing in the field has no irrigation facility and there were no well or bore in the said field. Panchnamas also reveal that water was being drawn from Nayaka Dam into the said field and keeping in mind the age of the crop, it was held by the learned Magistrate that if the defence putforward on behalf of the petitioner that there was a family arrangement between two brothers made on 14th October, 2000 and entry posted in revenue record on 18th October, 2000 and certified the same on 15th December, 2000, then also, it cannot be said that the date on which water was drawn to the field from Nayaka Dam is not 14th December, 2000 but prior to that and, therefore, it cannot be said that there is no prima-facie evidence to connect the petitioner with the crime in question. The judgment of the learned Magistrate was confirmed by the Sessions Judge, Surendranagar in Criminal Revision Application No.33 of 2001 considering various judgments in para 11 of its judgment.

9. I do agree with the findings given by the courts below and am of the opinion that the defence putforward on behalf of the petitioner and the arguments advanced on his behalf can be considered at the time of trial subject to cross-examination. It is to be noted that this is a second revision application filed by the petitioner against two concurrent findings. It is a settled legal position that once the revision application is rejected, second revision is not maintainable and the order of learned Sessions Judge would become final.

10. In view of what have been stated hereinabove, since the allegations made in the complaint and the statements of the witnesses recorded prima-facie disclose the ingredients of offence alleged against the petitioner, I am of the opinion that it is not a fit case to exercise power either under Sec.482 of the Code of Criminal Procedure. The arguments advanced and the defence putforward can be sought to be considered at the time of trial but cannot be considered at the preliminary stage for the purpose of quashing the complaint qua the present petitioner. Hence, this petition is required to be rejected.

11. This petition is hereby rejected. Rule is discharged. Interim relief stands vacated.

12. The observations by this Court in this judgment being made for the purpose of deciding this petition, same shall not prejudice the parties at the time of trial.

13. In view of the aforesaid judgment and order of rejection passed in Cri.Misc.Appln.No.1974 of 2002, no order is required to be passed in Cri.Misc.Appln.No.2593 of 2002. Notice issued in said application is discharged.

(R.P.DHOLAKIA,J.)

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Further Order

After pronouncement of this judgment, Mr.B.M.Mangukia, learned counsel for the petitioner prays for staying the execution of the order for a period of four weeks in order to approacah the higher forum.

Looking to the facts and circumstanaces, judgment and order is stayed for a period of four weeks to approach the higher forum.

(R.P.DHOLAKIA,J.)

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